
Local News

Seattle mayor's office privately orchestrated talks with council members before head tax repeal, city records show



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New records reveal that a conference call followed by a series of one-on-one phone conversations between Mayor Jenny Durkan's top deputies and at least seven council members took place in the days before Durkan announced plans to revoke the head tax.



By [Lewis Kamb](#) 

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A majority didn't secretly convene at any one time, but records show nearly every Seattle City Council member privately discussed an option to repeal the city's controversial head tax in the days before the city set a June 12 public meeting and vote to kill the measure.

Records produced this month by the City Attorney's Office in response to a lawsuit reveal that a conference call followed by a series of one-on-one phone conversations took place between Mayor Jenny Durkan's top deputies and at least seven council members over the weekend before Durkan released a surprise statement June 11 explaining the reasons for "consideration of legislation" to revoke the head tax.

The records also show that as the mayor's office privately lined up council members to sign on to that [joint public statement](#), representatives for Durkan and the council tried to keep word of it from leaking publicly for as long as possible.

When added up, there's no smoking gun, but lots of smoke signaling that the officials' behind-the-scenes maneuvering at the very least violated the intent of the state's Open Public Meetings Act (OPMA), if not the letter of it, according to a lawyer pursuing [a civil case against the city](#) over that issue.

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"It appears clearly that, at a minimum, the spirit of the OPMA was not adhered to," said Lincoln Beauregard, who represents plaintiff James Egan. "In my opinion, the records also reflect that the mayor's office, spearheaded by Deputy Mayor (Mike) Fong, facilitated an unlawful conversation by the council."

A spokesman for City Attorney Pete Holmes wrote in an email Thursday the city maintains "that no OPMA violation occurred."

"Our further comments on this issue will be made through our legal briefs or in the courtroom as the case proceeds," spokesman Dan Nolte added.

Earlier this month, Holmes' office filed [a motion to dismiss Egan's case](#), contending it names the city as its lone defendant, but not individual council members who are

the only parties potentially subject to remedies under the law. A hearing on the motion, which doesn't target [a related suit filed by perennial open-government litigant Arthur West](#), has been set for Sept. 7.

Details about officials' private head-tax-repeal discussions are revealed in [the city's written responses](#) to Egan's list of formal discovery questions and in [text records obtained by The Seattle Times](#) through a state Public Records Act request.

The records help fill in some of the gaps that [hadn't previously been known publicly about what transpired](#) in the days preceding the council's abrupt about-face on the yearly \$275 per-employee tax that would have been imposed on nearly 600 of the largest businesses in the city. The ordinance, which sought to raise \$47 million per year for homeless services and low-income housing, had long been in the works and was unanimously approved less than a month earlier.

The records show that on Saturday, June 9 — three days before the council's 7-to-2 vote to repeal the tax — Durkan's top deputies, Fong and Shefali Ranganathan, joined four council members on a private conference call to discuss "polling results about the public reaction" to the head tax.

"Although a potential repeal of the (Employee Hours Tax) was raised by non-City employees participating in the call, there was no proposed repeal at this time," the city's responses say.

The number of council members participating on the call — Lisa Herbold, M. Lorena González, Teresa Mosqueda and Mike O'Brien — fell one shy of a quorum, or a majority of the nine-member body that legally would constitute a formal "meeting" subject to the OPMA.

Following the call, Durkan convened her top advisers to discuss "potential options," then Fong and Ranganathan individually made more calls to five council members, including three who didn't participate in the conference call: Bruce Harrell, Debora Juarez and Sally Bagshaw.

The city's written responses don't detail exactly what was said during any of the calls, though Bagshaw previously has said she was told the mayor "already had heard from a number of my council colleagues that this was going to be on the agenda."

By Sunday evening June 10, the mayor's communications director Stephanie Formas began drafting a statement, with Durkan's input, about the need to consider a repeal, according to the records.

The next morning, after Durkan approved final language that cited "a prolonged, expensive political fight" as a driver for considering a repeal, Formas delivered the statement to the council's communications director, Dana Robinson Slote, to "determine which Councilmembers would be willing to sign on," the records say.

Text exchanges early that Monday between Slote and Formas also show they discussed the timing for publicly releasing the statement.

"Are you willing/able to hold until 1130?," Slote asks. "I feel sure I can deliver a majority with more time."

"Yes — that'll work. No leaks yet," Formas texted back.

Later, Formas texted Slote: "Still looking like 1130?"

"Yes — calling you momentarily," Slote responds. "Mosqueda staff says she is NOT signing on FYI — go ahead with statement."

More private discussions among individual council members also occurred early Monday, including Harrell briefly speaking with an eighth council member, Rob Johnson, who had been out of town the previous weekend (Johnson previously told The Times that Harrell advised him "it looks like we have the votes" to pass a repeal).

Kshama Sawant is the only member not named as a participant in any discussions described in the records.

About a half-hour after the mayor's office distributed Durkan's joint statement with the seven council members — all of whom voted the next day to revoke the tax —

Mosqueda issued her own statement explaining why she "won't join my colleagues and the mayor today."

Washington's open-meetings law, which aims to prevent backroom dealing and give the public a seat at the decision-making table, requires a government body's "actions be taken openly and that their deliberations be conducted openly."

Just because a quorum didn't privately meet before the vote doesn't mean the council didn't break the law.

Toby Nixon, president of the Washington Coalition for Open Government, noted "case law interpretation" of the OPMA prohibits council members from deliberating through a third party or a daisy-chain of individual conversations.

"The original call between Mosqueda, O'Brien, Herbold, and Gonzalez didn't have a quorum of councilmembers involved, but if their position on repealing the (head tax) was subsequently conveyed through a third party to even one additional (council member), then a serial meeting of a quorum of the council would have occurred, which, in my opinion, could have been illegal under the OPMA," Nixon said in an email.

Katherine George, a lawyer who specializes in open-government cases, views Egan's case as viable based on the discovery records, which she said suggest a council majority formulated "an intent to take action" through secret deliberations.

"A press release was being circulated and everyone knew it," George said. "And based on what the press release said, it seems like there was an intent to take action on official business."

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